LIBRARY
SUPREME COURT, U. S.

FEB 3 1971

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1299

EDWARD J. SEOT,

Petitioner,

vs.

FLORIDA INDUSTRIAL COMMISSION
and
NATIONAL AIRLINES, INC.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO REVIEW JUDGMENT OF THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

EDWARD J. SEOT
In Propria Persona
3004 N. W. 4th Terrace
Miami, Florida 33125

INDEX

	Page
QUESTIONS PRESENTED FOR REVIEW	2
STATEMENT OF THE CASE	6
ARGUMENT	9
CONCLUSION	11
CERTIFICATE OF SERVICE	12
APPENDIX	App. 1

TABLE OF CITATIONS

	Page
Kelly v. Florida Department of Commerce, Case No. 690	1, 9
National Airlines, Inc., v. I. A. M., 416 F.2d 998	6
N.L.R.B. v. Great Dane Trailers, Inc., 388 U.S. 26, 18 L.ed.2d 1027, 87 S.Ct. 1792	9
Radio Officers' Union v. N.L.R.B., 347 U.S. 17, 98 L.ed. 455, 74 S.Ct. 323	9
N.L.R.B. v. Erie Resistor Corp., 373 U.S. 221, 10 L.ed.2d 308, 83 S.Ct. 1139	9
Ashcraft v. Florida Industrial Commission, Fla.App. 1962, 155 So.2d 361	10

OTHER AUTHORITIES

U. S. Constitution Article VI, Cl. (2) Supremacy of the National Government	3
United States Code	
29 U.S.C. § 411	4
29 U.S.C. § 431	4
29 U.S.C. § 152	4
45 U.S.C. § 152	4, 5

In the
Supreme Court
of the
United States

OCTOBER TERM, 1970

No. _____

EDWARD J. SEOT,

Petitioner,

vs.

FLORIDA INDUSTRIAL COMMISSION
and
NATIONAL AIRLINES, INC.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO REVIEW JUDGMENT OF THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Petition for Writ of Certiorari in the District Court of Appeal of Florida, Third District, was denied without rendering an opinion. A reference was made to a companion case, *Kelly v. Florida Department of Commerce*, Case No. 70-590, filed October 12, 1970. Kelly opinion appended hereto.

Petition for review of Case No. 19-238 was denied October 15, 1970, the final order was entered November 5, 1970. Jurisdiction to review the judgment in question is conferred on the United States Supreme Court by 28 USC § 1257(3).

Petitioner begs the sufferance of this Court to present this case in Propria Persona under the provision of 28 USC § 1654 — In all courts of the U. S. the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein. June 25, 1948, c. 646, 62 Stat. 944; May 24, 1949, c. 139, §§ 91, 63 Stat. 103.

QUESTIONS PRESENTED FOR REVIEW

1. (a) Does the right of a labor organization to adopt and enforce its own rules imply that a member of that organization is bound to observe those rules? (b) Is the observance of those rules a voluntary act if the labor organization can fine and expel members who violate those rules?

2. Does the compulsory requirement of membership in a labor organization concede the right to remain a member in good standing?

3. Is the employer guilty of discouraging membership in a labor organization by interference and coercion through conduct motivated by anti-union purpose, conduct inherently destructive of employee interests?

4. Can the State discourage maintenance of membership in a labor organization by interference and coercion through placing a financial burden on union members who must observe union rules and abide by federal contract?

5. Is it an unfair labor practice for an employer to discriminate between groups of employees (a) by allowing temporary employment to approximately 200 non-striking candidates, (200 union members, 200 non-union members), thereby causing the Florida Industrial Commission to deny unemployment compensation benefits to union candidates? (b) by granting furloughs immediately to other groups of non-striking employees, (pilots, flight engineers, stewardesses, etc.), thus making them eligible for unemployment compensation benefits?

6. Is it permissible for the Florida Industrial Commission to discriminate between union and non-union claimants in determining eligibility for unemployment compensation benefits?

UNITED STATES CONSTITUTION

Article VI, Cl.(2) Supremacy of the National Government.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

29 U.S.C. § *411(a)(2), 73 Stat. 522* ***Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

29 U.S.C. § *481(a)(5), 73 Stat. 525*** (A) qualifications for or restrictions on membership *** (I) imposition of fines, suspensions, and expulsions of members, including the grounds for such action and any provision made for notice, hearing, judgment on the evidence, and appeal procedures, ***

29 U.S.C. § *158(a)(3), 49 Stat. 452*, It shall be an unfair labor practice for an employer— *** By discrimination in regard to hire or tenure of employment or any term or conditions of employment to encourage or discourage membership in any labor organization ***

45 U.S.C. § *152 First 64 Stat. 1238* It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

45 U.S.C. § 152 Fourth, 64 Stat. 1238 Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, ******

45 U.S.C. § 152 Eleventh 64 Stat. 1238 (a) Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted —(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class; ******

STATEMENT OF THE CASE

On January 17, 1969, a labor dispute erupted between the International Association of Machinists and Aerospace Workers, hereinafter referred to as the IAM, and National Airlines, Inc., hereinafter referred to as the employer. The work stoppage was branded a wildcat strike although initiated by union stewards. Notwithstanding the fact that the men were under court order to return to work, union stewards exhorted them to refrain from returning to work. On January 21, 1969, all machinists who had not returned to work were declared to be engaged in an illegal strike and discharged by the employer. *National Airlines, Inc., v. I. A. M.*, 416 F.2d 998.

Shortly thereafter, approximately 200 machinists, including petitioner, returned to work, feeling assured that seniority and other rights would be restored through the judicial process. The IAM was not happy with the group's decision to return to work while the Court decided the merits of the case, even though the collective bargaining agreement forbade wildcat strikes. The employer hired about 650 men to replace the strikers who did not return to work, the IAM refused union membership to the 650 replacements.

On January 31, 1970, another union, Air Line Employees Association, hereinafter referred to as ALEA, struck National Airlines, Inc., after exhausting all provisions under the Railway Labor Act to reach agreement. All airline service was suspended, all aircraft was grounded. Petitioner expected to receive a furlough telegram temporarily terminating employment, as had always

been done in the past, and filed a claim for unemployment insurance benefits on February 1, 1970. Eligibility was denied on erroneous grounds February 9, 1970, stating that petitioner was involved in the IAM labor dispute of 1969, still in litigation. An appeal was filed February 11, 1970.

With all aircraft grounded, the employer made work available for more than 850 machinists for a three week period, doing work that had customarily been done in past labor disputes by supervisory personnel. In compliance with the IAM rules and the collective bargaining agreement, plus IAM instructions that the ALEA picket line was to be honored, petitioner honored the lawful ALEA picket line. Article III(c) of the IAM collective bargaining agreement provides a guarantee by the employer that employees covered under the agreement will not be disciplined because of refusal to cross a lawful picket line of another union, (the inclusion of such a clause anticipates the availability of work). Some few union machinists and nearly all non-union machinists crossed the ALEA picket line.

On February 20, 1970, all machinists, including petitioner, received furlough notices terminating the availability of work. Furloughed non-union machinists were determined eligible and received unemployment compensation benefits for the duration of the ALEA dispute, furloughed union machinists who crossed the picket line and worked through the three week period were denied eligibility on the same grounds as petitioner was denied.

A hearing was held on March 9, 1970, to consider appeals. The Referee found the claimants ineligible not

because they were participants in the IAM strike, but because they were participating in the strike by ALEA, which commenced January 31, 1970, by refusing to cross peaceful picket lines established by striking employees at a time when work was available for them, and for the duration of their unemployment which is due to the ALEA labor dispute. A timely appeal to the Industrial Relations Commission resulted in affirmance of the Referee's decision. The next step was initiating a proceeding for Judicial review in the District Court of Appeals for writ of certiorari, which petitioner commenced on May 12, 1970. A hearing was held on October 12, 1970, and on October 12, 1970, certiorari was denied. A final order was entered November 5, 1970.

In petitioning the District Court of Appeals of Florida, Third District, for writ of certiorari, petitioner raised the question of whether adherence to the federal statutes which govern labor policy through the collective bargaining process, and to the constitution and by-laws of a labor organization, removes freedom of choice from one who is bound by those rules and agreements, and therefore his action cannot be voluntary. Section 152 First of the Railway Labor Act; Public Law 86-257, §§ 411, 481, 1959; Sec. 8(b)(1), N.L.R.A.

Joining and remaining a member is not altogether a voluntary consideration in closed shop agreements; 45 USC Sec. 152 Eleventh, 64 Stat. 1238, provides that notwithstanding the laws of any State, an agreement requiring all employees to become members of a labor organization within a stated time is lawful.

Discouraging membership and discrimination against union members on the part of the employer were covered in several Supreme Court decisions, notably *N.L.R.B. v. Great Dane Trailers, Inc.*, 388 U.S. 26, 18 L.ed.2d 1027, 87 S.Ct. 1792; *Radio Officers' Union v. N.L.R.B.*, 347 U.S. 17, 98 L.ed. 455, 74 S.Ct. 323; *N.L.R.B. v. Erie Resistor Corp.*, 373 U.S. 221, 10 L.ed.2d 308, 83 S.Ct. 1139.

The charge of discrimination and discouraging union membership on the part of the State was shown by transferring the applicability of prohibitions contained in federal statutes from employers, to States, and by invoking Article VI, Cl. (2) of the U. S. Constitution, that a federal law cannot be vitiated by a state law.

The Court did not address itself to petitioner's brief, however; the Court ruled out that grounds existed to find refusal of eligibility for unemployment compensation benefits unconstitutional due to conflict of federal and state statute, in *Kelly v. Florida Dept. of Commerce*, supra, appended hereto.

ARGUMENT

Union machinists were placed in a precarious position by their employer, who deliberately chose to ignore a provision of the collective bargaining agreement and insisted they cross the lawful picket line of another union to become eligible for unemployment compensation benefits. The employer's action was not used in past labor disputes, and created conflict and confusion.

Union machinists were bound by federal law from crossing the ALEA picket line. The employer forced the issue of compelling the men either to pay fines and be expelled from union membership, or to suffer a financial burden of not receiving unemployment compensation benefits during the strike. Non-union machinists and other groups that received immediate furloughs were free of this dilemma.

The State of Florida has shown discrimination against claimants who belong to a labor organization by denying unemployment compensation benefits, first, by misconstruction of § 443.06(4), Fla.Stat., in this instance, and second, by ignoring the implications of national labor policy which rests exclusively on the maintenance of collective bargaining agreements by all parties, having the force of federal contracts under federal law.

The Florida Industrial Commission violated the State Unemployment Compensation Law in paying unemployment compensation benefits to non-union machinists who belong to the same craft or class as petitioner; § 443.06(4) was explicitly stated in *Ashmead v. Florida Industrial Commission*, Fla.App. 1962, 155 So.2d 801. The criterion for eligibility in this case was union or non-union membership.

Both the employer and the State of Florida have shown a gross disregard for the protected right of men covered under the Railway Labor Act. Such display of anti-union animus must not be condoned.

CONCLUSION

Petitioner respectfully submits that Writ of Certiorari be granted.

Respectfully submitted,

EDWARD J. SHOT,
Petitioner

Edward J. Shot
3004 N. W. 4th Terrace
Miami, Florida 33125

CERTIFICATE OF SERVICE

I, Edward J. Szot, Petitioner, certify that on the 1st day of February, 1978, I served a copy of the foregoing Petition for Writ of Certiorari to the Supreme Court of the United States on National Airlines, Inc., P.O. Box 2055, Airport Mail Facility, Miami, Florida 33159, and James R. Parks, Attorney for Respondent, Room 161 (c/o U. C. Claims, Room 102) State Office Building, 1350 N. W. 12th Avenue, Miami, Florida 33126

Edward J. Szot

EDWARD J. SZOT,
Petitioner

APPENDIX

DISTRICT COURT OF APPEALS OF FLORIDA
THIRD DISTRICT

October 12, 1970

No. 70-590

EDGAR A. KELLY, et al.,

Petitioners,

vs.

FLORIDA DEPARTMENT OF COMMERCE, INDUSTRIAL RELATIONS COMMISSION, and NATIONAL AIRLINES, INC.,

Respondents.

Rehearing Denied October 26, 1970

Proceeding on petition for writ of certiorari for review of decisions of Industrial Relations Commission that held petitioners be disqualified to receive unemployment compensation benefits, based on finding that their unemployment was due to labor dispute. The District Court of Appeal held that Statute prohibiting payment of unemployment compensation for voluntary refusal to cross a lawful picket line of another union is not unconstitutional on ground that it is in conflict with federal labor law and thus violates supremacy clause of Federal Constitution. Certiorari Denied.

States 4.13 Statute prohibiting payment of unemployment compensation for voluntary refusal to cross lawful picket line of another union is not unconstitutional on ground that it is in conflict with federal labor law and thus violates supremacy clause of Federal Constitution. F.S.A. § 443.06(4); U.S.C.A. Const. Art. 6, cl. 2.

Before Pearson, C.J., and Charles Carroll and Swann, J. J. Per Curiam.

The petitioners seek review of decisions of the Industrial Relations Commission of the Florida Department of Commerce which held them to be disqualified to receive unemployment compensation benefits, based on finding their unemployment was due to a labor dispute. The Florida Unemployment Compensation Law, by § 443.06(4), provides: "For any week with respect to which the division finds that his total or partial unemployment is due to a labor dispute in active progress which exists at the factory, establishment or other premises at which he is or was last employed; provided, that this subsection shall not apply if it is shown to the satisfaction of the division that: "[stating certain provisos not applicable here].

The facts were set out in the petition for certiorari as follows: "The following are the facts of this case: Petitioners were employed by National Airlines. They are all members of the I.A.M.A.W. On January 31, 1970, another union, the ALEA, went on strike against National Airlines. The strike was lawful and occurred after the procedures of the Railway Labor Act which governed the parties had been exhausted. Petitioners were not among the grade or class of workers represented by the Air Line Employees Association. Petitioners were not on strike. How-

ever, from January 31, 1970, to February 20, 1970, Petitioners voluntarily refused to cross the legal picket line of the ALEA. On February 20, 1970, National Airlines furloughed the petitioners and all others in their class.

"The appeals referee in decisions affirmed by the Industrial Relations Commission held that the petitioners had participated in the labor dispute between the ALEA and National Airlines, within the meaning of Fla.Stat. 443.06(4), by voluntarily refusing to cross the lawful picket line. All petitioners were disqualified for unemployment compensation benefits from January 31, 1970, for the duration of their unemployment which the referee held was due to the ALEA strike.

"Petitioners are unaware of any dispute as to the relevant facts in this cause."

The initial ruling, by the Claims Examiner on February 11, 1970, was as follows: "You are disqualified beginning January 17, 1969, and for the duration of your unemployment which is due to the labor dispute at the factory or other premises of National Airlines, Inc." Request for reconsideration was denied. Appeal to an Appeals Referee resulted in affirmance of the ruling of the Claims Examiners, with a modification thereof which substituted January 31, 1970, as the commencement of the period of disqualification for benefits. "*Decision:* The determinations of the Claims Examiners disqualifying claimants for benefits for the period beginning January 17, 1969, and for the duration of their unemployment which is due to the labor dispute at the premises of employer (-034650) is hereby modified so as to hold that claimants shall be disqualified for the period beginning

January 31, 1970, and for the duration of their unemployment which is due to the ALEA labor dispute and the determinations, as modified, are affirmed." The Commission affirmed the decision of the Appeals Referee. Except for a contention that even if the Florida Statutory provision invoked is valid it should not be applied during a period when a striking claimant-employee is furloughed by the employer, (a contention rejected in Butcher v. Florida Industrial Commission, Fla.App. 1970, 231 So.2d 47), the petitioners, not disputing the applicability to them of § 443.06(4) on the facts, present only the contention that the cited statutory provision is unconstitutional. The petitioners submit that contention in the petition for certiorari and in their brief in the form of a question, as follows: "Is Florida Statute 443.06(4) as applied to deprive petitioners of unemployment compensation for voluntary refusal to cross a lawful picket line of another union unconstitutional on the grounds that it is in conflict with federal labor law and thus violates Article VI, Clause 2, of the Supremacy Clause of the Constitution of the United States?"

On the facts shown with reference to the status of the petitioners, the action and decision of the Commission was proper under the statute. Ashmead v. Florida Industrial Commission, Fla.App. 1963, 155 So.2d 801. However, citing two United States Supreme Court cases, Nash v. Florida Industrial Commission, (1967), 389 U.S. 235, 88 S.Ct. 362, 19 L.Ed.2d 486; Brotherhood of Railroad Trainmen, et al., v. Jacksonville Terminal Co., (1969), 394 U.S. 369, 89 S.Ct. 1109, 22 L.Ed.2d 344, the petitioners contend that under those decisions a state statute disqualifying an employee to receive unemployment compensation benefits for the reasons specified in this instance

is unconstitutional. They argue that under those federal decisions, the Florida statutory provision is invalid as frustrating the purposes and principles of the federal labor law and by depriving the petitioners of a lawful right to refuse to cross a lawfully constituted picket line without subjecting themselves to discharge or other employer penalty. We reject those contentions as unsound with relation to the Florida statutory provisions in question as applicable to the circumstances of this case. We hold the challenged Florida statutory provision is valid. Certiorari denied.

Referee's Decision Docket No. 70-379-U

STATE OF FLORIDA
DEPARTMENT OF COMMERCE
UNEMPLOYMENT COMPENSATION APPEAL SECTION
TALLAHASSEE, FLORIDA

In the Matter of: Social Security Account No. 168-12-5727 (Claimant-Appellant) Employer No. -034850	UNEMPLOYMENT COMPENSATION CLAIM Appeal from Determination of Claims Examiner

DECISION OF APPEALS REFEREE

After due notice to the parties, a consolidated hearing was held at Miami, Florida, on March 9, 1970. An appearance was made by forty-nine of the fifty-two claimants involved. The employer did not appear. A district supervisor represented the Department of Commerce, Unemployment Compensation Division.

ISSUE INVOLVED: Whether claimants' total or partial unemployment is due to a labor dispute in active progress which exists at the factory, establishment, or other premises at which they are or were last employed, within the meaning of Section 443.06(4)(a)(b), Florida Statutes.

HISTORY OF CASE: Claimants filed new or additional claims on and after February 1, 1970. The Claims Examiners made determinations on and after February 9, 1970, disqualifying claimants for benefits because their unemployment was due to a labor dispute. Claimants were notified by mail on and after February 9, 1970, and appeals were filed by them on and after February 11, 1970.

FINDINGS OF FACT: Claimants were employed by employer (-034850), a certified air carrier of passengers and cargo, as mechanics, cleaners and gas truck drivers. International Association of Machinist and Aerospace Workers is their duly authorized bargaining agent. On January 17, 1969, approximately one thousand members of that labor organization, including claimants, withheld their services and struck against the employer in concert because, among other things, three union members had been suspended by the employer. A Federal District Court Judge granted a preliminary injunction against the union in which the union and any persons acting in concert with the union were enjoined from striking. The Federal Judge also characterized the strike as an illegal "wildcat strike" and ordered that the union direct its members to return to work. On January 20, 1969, the union and the employer sent telegrams to the strikers in which they were directed to report for duty on their next scheduled shift. Some of the claimants complied with that directive. Those who did were permitted to resume work without forfeiting employee benefits of any type. Claimants who did not return at the time that had been specified for them to do so became convinced that the strike would not be successful and it would not be

in their best interest to participate in the labor dispute at further length. Accordingly, within a relatively short period of time, all such claimants resumed their employment with the employer. Those who came back to work after January 21, did so with the knowledge that their pension rights had been preserved but they would be treated as new employees insofar as seniority was concerned. All claimants were reinstated as permanent employees. Each resumed work in his accustomed occupation at the same wage that had been paid to him prior to the commencement of the strike. A substantial majority of the original group of striking employees did not apply for reinstatement. Picket lines were established adjacent to the employer's business premises. The union has paid members who perform picket duty or render services at the union hall benefits in the amount of $25 weekly. Some individuals who chose to disassociate themselves from the labor dispute have been subjected to various forms of intimidation and harassment; however, such tactics were discontinued about four months ago. No incident of material consequence occurred to adversely affect the employment status of the claimants for a period of approximately twelve months after they had returned to work. On January 31, 1970, a labor dispute commenced in active progress between the employer and twenty-two different classes of workers (the majority of which are clerical) whose duly authorized bargaining agent is Air Line Employees Association. Persons attached to this bargaining unit established picket lines at the employer's business premises. Picketing has been conducted in a peaceful and orderly manner. About five hundred employees in the same grade or class as claimants crossed the picket lines and continued to work until they were furloughed by the employer. All of the claimants herein involved honored the Air Line Employees Association picket lines. Each voluntarily withheld his services on and after January 31, 1970, at a time when work was available for him. Effective February 20, 1970, the employer furloughed the claimants and other employees in their grade or class. As of March 9, 1970, the International Association of Machinist and Aerospace Workers and the Air Line Employees Association labor disputes were in active progress.

Claimants are unemployed due to a labor dispute in active progress, in which they participated, at the premises at which they are or were last employed. Each is properly subject to disqualification for the period beginning January 31, 1970, and for the duration of the Air Line Employees Association labor dispute.

REASONS FOR DECISION: Section 443.06(4), Florida Statutes, provides that an individual shall be disqualified for benefits for any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute in active progress which exists at the factory, establishment or other premises at which he is or was last employed; provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that:

(a) He is not participating in or financing, or directly interested in the labor dispute which is in active progress;

provided, however, that payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this section; and

(b) He does not belong to a grade or class of workers of which immediately before the commencement of the labor dispute there were members employed at the premises at which the labor dispute occurs any of whom are participating in, or financing, or directly interested in the dispute; provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises, or are conducted in separate departments of the same premises, each department shall, for the purpose of this subsection be deemed to be a separate factory, establishment or other premises.

The record and evidence of the instant case clearly show that a labor dispute commenced in active progress on January 17, 1969, at the premises at which claimants are or were last employed and that such dispute was between claimants' employer and members of International Association of Machinist and Aerospace Workers. It has been further shown that claimants became unemployed due to that labor dispute. In addition, they participated in it by withholding their services from the employer at a time when work was available for them. Accordingly, each is properly subject to disqualification for the period beginning January 17, 1969, and thereafter for any week in which his total or partial unemployment is due to the aforesaid labor dispute. Subsequent employment can terminate this disqualification provided such employment is bona fide and not a device to circumvent the Statutes. "Bona fide" employment is that which the worker undertakes in good faith and which he regards as being permanent and for an indefinite period. Clear and convincing testimony was presented at the appeals hearing to show that all of the claimants herein involved evidenced a total abandonment of the labor dispute upon going to the struck employer and making individual application for reinstatement without demanding that any of the original factors of the dispute be met by the employer. All claimants were reinstated in their former jobs and at the same wage they had been accustomed to earning. At the time claimants resumed their employment, the labor dispute was ended as far as they were concerned. Such reemployment was obviously undertaken in good faith and was regarded as being permanent. It, therefore, follows that the employment in which claimants engaged subsequent to January 17, 1970, was bona fide employment that served to relieve them of disqualification with respect to the International Association of Machinist and Aerospace Workers labor dispute.

The hearing testimony further shows that another labor dispute commenced in active progress on January 31, 1970, at the premises at which claimants were employed and that they became unemployed due to such dispute. This labor controversy, which has not been

terminated, was between the employer and employees whose bargaining agent is Air Line Employees Association. All claimants participated in the dispute by refusing to cross peaceful picket lines established by the striking employees at a time when work was available for them. Accordingly, it should be held that claimants' total or partial unemployment is due to a labor dispute in active progress which exists at the premises at which they are or were last employed and since none can meet the exceptions provided for in the Law, they are properly subject to disqualification for the duration of the Air Line Employees Association labor dispute.

DECISION: The determinations of the Claims Examiners disqualifying claimants for benefits for the period beginning January 17, 1969, and for the duration of their unemployment which is due to the labor dispute at the premises of employer (-034850) is hereby modified so as to hold that claimants shall be disqualified for the period beginning January 31, 1970, and for the duration of their unemployment which is due to the Air Line Employees Association labor dispute and the determinations, as modified, are affirmed.

The issues involved in this decision were resolved and decided by this Referee while sitting in his office at Miami, Florida, this 13th day of March 1970, A. D.

Thomas J. Dowdell, Jr.
Senior Appeals Referee

Date Mailed All Parties: March 13, 1970

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1970

TUESDAY, OCTOBER 13, 1970

EDWARD J. SZOT,	**	
Petitioner,	**	
vs.	**	
NATIONAL AIRLINES, INC., and FLORIDA DEPARTMENT OF COMMERCE, FLORIDA INDUSTRIAL RELATIONS COMMISSION,	**	CASE NO. 70-535
Respondents.	**	

This cause having come on for hearing upon petition for Writ of Certiorari, the transcript of record and briefs to review the order of the Florida Department of Commerce, Industrial Relations Commission dated April 29, 1970, and the court having considered same after hearing oral argument thereon, it is ordered that said petition be and the same is hereby denied. See Kelly v. Fla. Dept. of Commerce, Fla.App. 3rd 1970 Case No. 70-590 filed October 13, 1970, not yet reported.

A True Copy

ATTEST:

Clerk District Court of Appeal, Third District

cc: James R. Parks
Patrick H. Mears
Edward J. Szot
National Airlines

/dlh

LIBRARY
SUPREME COURT, U. S.

FILED

In the

Supreme Court

of the

United States

OCTOBER TERM, 1970

No. 1299

EDWARD J. SEOT,

Petitioner,

vs.

FLORIDA INDUSTRIAL COMMISSION AND NATIONAL AIRLINES, INC.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

JAMES R. PARKS,
Room 101
(c/o U. C. Claims, Room 102)
State Office Building
1350 N. W. 12th Avenue
Miami, Florida 33136
Attorney for Respondent
Florida Industrial Commission

TABLE OF CONTENTS

	Page
Question Presented	2
Statute Involved	2
Statement	2
Reasons Why the Writ Should Not Be Granted	4
Conclusion	7

AUTHORITIES CITED

Case	Page
Fry Roofing Co. v. Wood, 344 U. S. 157, 160	5
Grayson v. Harris, 267 U. S. 352, 358	5
Nash v. Florida Industrial Commission, 389 U. S. 235	4
Unemployment Compensation Commission v. Aragon, 329 U. S. 143	5

Miscellaneous:

Florida Unemployment Compensation Law, 15 F.S.A. Chapter 443 (1969)	2

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1299

EDWARD J. SZOT,

Petitioner,

vs.

FLORIDA INDUSTRIAL COMMISSION AND NATIONAL AIRLINES, INC.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Respondent is not satisfied that Petitioner has correctly presented the statutes involved in this case. Further, Respondent is not satisfied with Petitioner's presentation of questions presented for review in this case. And, finally, Respondent is not satisfied that Petitioner has accurately presented the statement of the case.

QUESTION PRESENTED

Whether denial of compensation by a State, pursuant to its unemployment compensation statute, to workers who are voluntarily unemployed due to a labor dispute and who voluntarily participate in a labor dispute collides with national labor policy.

STATUTE INVOLVED

The Florida Unemployment Compensation Law (15 F.S.A. (1969)) is the statute which this case involves. Such law provides, in pertinent part, as follows:

> "443.06 Disqualification for benefits. — An individual shall be disqualified for benefits:
>
> • • •
>
> "(4) For any week with respect to which the division finds that his total or partial unemployment is due to a labor dispute in active progress which exists at the factory, establishment or other premises at which he is or was last employed; •••"

STATEMENT

The question presented by this case pertains to the denial by the State of Florida of unemployment compensation to workers who voluntarily became unemployed due to a labor dispute, and who voluntarily participated in a labor dispute between their employer and another group of workers of their employer, such other group being represented by a labor organization other than the one which represents them. The facts relevant to this question may be stated as follows.

Petitioner and others involved below rendered service for National Airlines, Inc. as mechanics and cleaners (R. 44, 48, 92). International Association of Machinists and Aerospace Workers (hereinafter to be referred to as IAM) is their duly authorized bargaining agent (R. 78). On January 31, 1970, a labor dispute commenced in active progress, at the premises at which Petitioner was employed, between National Airlines, Inc. and workers whose duly authorized bargaining agent (hereinafter to be referred to as ALEA) is Air Line Employees Association (R. 10). Persons attached to this bargaining unit established picket lines at the premises of National Airlines, Inc. (R. 13, 42). Picketing was conducted in a peaceful and orderly manner (R. 10, 13, 29, 32, 46). Petitioner and others involved below honored the ALEA picket lines (R. 45, 73, 74, 104, 106); they voluntarily withheld their services when work was available for them (R. 51, 60, 73, 84, 104).

On February 2, 1970, Petitioner filed a claim for unemployment compensation (R. 1). Respondent held Petitioner to be disqualified for unemployment compensation, under the provisions of Section 443.06(4), Florida Statutes (R. 3), for the period beginning January 31, 1970, and for the duration of his unemployment which was due to the labor dispute between ALEA represented workers and National Airlines, Inc. (R. 111).

Effective February 20, 1970, National Airlines, Inc. furloughed Petitioner and others involved below (R. 47, 49, 121).

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

Without ever mentioning *Nash v. Florida Industrial Commission*, 389 U.S. 235, Petitioner attempts to force this case into the mold of that case. Petitioner's attempt in that regard has caused distortion. The decisions below make it clear that Petitioner and others involved below were denied unemployment compensation because they voluntarily became unemployed due to a labor dispute and voluntarily participated in a labor dispute and not because of their exercise of federally guaranteed rights.

Petitioner in the first instance voluntarily became unemployed because of a labor dispute between ALEA represented workers and National Airlines, Inc. and he persisted in remaining unemployed due to such labor dispute.

The Appeals Referee in his decision reasoned: (R. 110, 111)

> "The hearing testimony further shows that another labor dispute commenced in active progress on January 31, 1970, at the premises at which claimants were employed and that they became unemployed due to such dispute. This labor controversy, which has not been terminated, was between the employer and employees whose bargaining agent is Air Line Employees Association. All claimants participated in the dispute by refusing to cross peaceful picket lines established by the striking employees at a time when work was available for them. Accordingly,

> it should be held that claimants' total or partial unemployment is due to a labor dispute in active progress which exists at the premises at which they are or were last employed and since none can meet the exceptions provided for in the Law, they are properly subject to disqualification for the duration of the Air Line Employees Association labor dispute."

This Court has approved the denial of unemployment compensation when due to a labor dispute. *Unemployment Compensation Commission v. Aragon*, 329 U.S. 143 (1946). The reason ascribed by this Court to the legislative exclusion is "the broad policy of the legislature to compensate only persons involuntarily unemployed." *Ibid.*, fn. 13. And it is to be noted that the provisions of the Alaska law considered by this Court in *Unemployment Compensation Commission v. Aragon*, 329 U.S. 143, are parallel with provisions of Section 443.06, Florida Statutes, pertinent in this instance.

Petitioner is really urging the Court to reverse the factual finding at all levels below that compensation was denied because of voluntary participation in a labor dispute; i.e. in spite of the classic symptoms of voluntary unemployment due to a labor dispute and refusal to work at available employment because of a labor dispute, Respondent really denied compensation because Petitioner exercised federally guaranteed rights. The findings below all rest on competent substantial evidence. This Court does not normally exercise its jurisdiction merely to review a decision of a state court upon a question of fact. *Grayson v. Harris*, 267 U.S. 352, 358; *Fry Roofing Co. v. Wood*, 344 U.S. 157, 160.

The differences between *Nash v. Florida Industrial Commission*, 389 U.S. 235, and the instant case are so many as to render *Nash* inappropriate:

(1) *Nash* had been laid off work and was awaiting only a call to return; Petitioner refused to work at available employment, voluntarily became unemployed due to a labor dispute and voluntarily participated in a labor dispute.

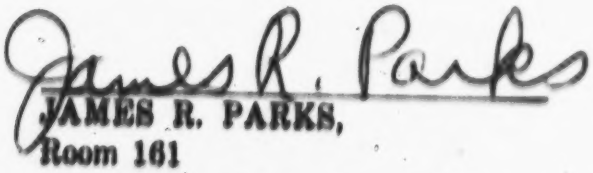
(2) The sole reason for denying *Nash* compensation was her filing of an unfair labor practice charge. 389 U.S. 28. The sole reason for denying Petitioner and others involved below compensation was voluntary participation in a labor dispute.

(3) The dilemma noted by this Court in *Nash* (389 U.S. 239). (keeping quiet and collecting compensation or filing an unfair labor practice charge and forfeiting compensation) did not exist in this case.

CONCLUSION

For the reasons stated this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,



JAMES R. PARKS,
Room 161
(c/o U. C. Claims, Room 102)
State Office Building
1350 N. W. 12th Avenue
Miami, Florida 33136

Attorney for Respondent
Florida Industrial Commission

CERTIORARI DENIED